IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs November 14, 2006

STATE OF TENNESSEE v. GREGORY DUNNORM

Appeal from the Criminal Court for Anderson County
No. A3CR0316 James B. Scott, Jr., Judge

No. E2006-00366-CCA-R3-CD - Filed January 22, 2007

The Defendant, Gregory Dunnorm, was indicted by an Anderson County grand jury for one count of third offense of driving with a suspended license and one count of failure to appear. Following a jury trial, the Defendant was convicted of second offense of driving with a suspended license, a Class A misdemeanor, and failure to appear, a Class E felony. The Defendant filed a timely motion for a new trial, which the trial court denied. The Defendant now appeals, arguing that the evidence was insufficient to support his conviction for failure to appear beyond a reasonable doubt.[1] We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and NORMA MCGEE OGLE, JJ., joined.

Brian J. Hunt, Clinton, Tennessee, for the appellant, Gregory Dunnorm.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; James N. Ramsey, District Attorney General; and Jan Hicks, Assistant District Attorney General, for the appellee, State of Tennessee.

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[1] The Defendant does not challenge the sufficiency of the evidence to support his conviction for driving with a suspended license.

OPINION

Factual Background

In the early morning hours of January 12, 2003, Officer Kent Warren of the Oak Ridge Police Department observed a green Buick driving into the Fairview Apartment complex, which is known to be a high-crime area with an "open drug market" and to have a high incidence of reported violence. Officer Warren contacted local dispatch officers with the vehicle's license tag information, and he was informed that the vehicle was registered to the Defendant. The vehicle left the area, but approximately an hour later, Officer Warren observed the Defendant's vehicle enter the apartment complex again. The Defendant parked the vehicle and remained sitting in the parking lot.

Officer Warren approached the car on foot, "tapped on the driver's side window," and "asked [the Defendant] what he was doing in the area." Officer Warren testified that he then asked the Defendant for identification and that the Defendant responded that he did not have any identification because his license was suspended. Officer Warren testified that he asked the Defendant if he had been driving in the area earlier that morning as well, and Officer Warren testified that the Defendant stated that he had. Officer Warren testified that he attempted to ascertain whether the Defendant actually had a suspended license through the Tennessee Information System, but that the "system was down."[2] The next evening, Officer Warren testified that he again attempted to verify the Defendant's license status and that he determined that the Defendant did have a suspended license. After receiving this information, Officer Warren "swore out a warrant for his arrest" on "driving under a suspended license." The Defendant claimed at trial that he was not driving that evening but was sitting in the parked car with a friend.

The Defendant was subsequently arrested for driving with a suspended license and was scheduled to appear in court on April 22, 2003. The Defendant requested additional time to hire an attorney, and his case was reset for April 29, 2003. His attorney then reset the court date to June 3, 2003, and the Defendant appeared in court that morning. At that time, the Defendant's case was reset a third time to July 15, 2003, apparently based upon the officers' schedules.

According to Delores Brousseau, who serves as a judicial aid to the general sessions court judge, the Defendant should have received a "card" on June 3, 2003, with the adjusted court date on it; Ms. Brousseau stated that she "assum[ed]" that the Defendant received it. General Sessions Bailiff John Shuey stated that it is "very rare that there's not a card presented" to instruct a defendant of the rescheduled court date; the bailiff further stated that he "can't remember a time" when a defendant has not been given the scheduling card. According to the general sessions court custodian of records, the Defendant did not appear for his scheduled court hearing on July 15, 2003. On July 23, 2003, the Defendant did appear and was "issued a citation for failure to appear from the week before."

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[2] According to Officer Warren, the Tennessee Information System "goes down every Sunday morning for a database update."

At trial, the Defendant testified that he did not know that he had a scheduled court date on July 15, 2003. The Defendant testified that he knew his case had been rescheduled in April and that he "did not remember if [he] received a card" with the adjusted date; he stated that there was a "possibility" that he did receive the card. The Defendant stated that he was aware that the court gives these cards, though, because he had "gotten cards before." The Defendant testified that he believed that his court date was on July 23, although the record does not indicate why the Defendant believed that this was his scheduled date. The record does show that the Defendant went to the courthouse on July 23, and that his name was not listed on the docket for that day. The Defendant asked the clerk's office why his name was not included, and he was told that his appearance was scheduled during the previous week. The Defendant testified that this was the first time he realized he had missed his court date and that he received a citation for failure to appear. The Defendant testified that he had "never missed court and never been late" before July 15, 2003.

Procedural Background

On November 4, 2003, the Defendant was indicted by an Anderson County grand jury for third offense of driving with a suspended license and failure to appear. Following a jury trial, the Defendant was convicted of second offense of driving with a suspended license, a Class A misdemeanor, and failure to appear, a Class E felony. The Defendant filed a timely motion for a new trial, which the trial court denied. This timely appeal followed.

Analysis

The Defendant's sole issue on appeal is whether the evidence was sufficient for a jury to convict him of failure to appear beyond a reasonable doubt. Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by

the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

Under Tennessee Code Annotated section 39-16-609, "[i]t is unlawful for any person to knowingly fail to appear as directed by a lawful authority if the person . . . has lawfully been released from custody, with or without bail, on condition of subsequent appearance at an official proceeding . . . at a specified time or place. . . ." Tenn. Code Ann. § 39-16-609(a)-(a)(2) (2003). "It is a defense to prosecution under this section if . . . [t]he person had a reasonable excuse for failure to appear at the specified time and place." Tenn. Code Ann. § 39-16-609(b) (2003). In reviewing the sufficiency of the evidence to support a conviction for failure to appear, this Court has stated that the "reasonableness of [a defendant's] excuse for his failure to appear is a factual question to be decided by the jury based upon the testimony." State v. John David Rankin, No. 0C301-9511-CC-00369, 1996 WL 469678, at *3 (Tenn. Crim. App., Knoxville, Aug. 19, 1996).

In this case, the Defendant did not appear for his scheduled court date. The State presented testimony that the Defendant appeared in court on June 3, 2003, at which time his case was reset for July 15, 2003. The Defendant stated that he did not knowingly miss the court date; however, the State presented evidence that the Defendant would have received a card listing his court date. The Defendant stated that he knew that rescheduling dates were shown on such cards. Further, the Defendant stated that there was a "possibility" that he did receive the scheduling card. Any questions concerning the credibility of the witnesses, including the credibility of the Defendant's testimony, was resolved in favor of the State. Based on our review of the record, we conclude that the jury had sufficient evidence to find that the Defendant knowingly failed to appear for his scheduled hearing.

Conclusion

Based upon the foregoing reasoning and authorities, we conclude that the State presented sufficient evidence to convict the Defendant of failure to appear beyond a reasonable doubt. Thus, we affirm the judgment of the trial court.

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DAVID H. WELLES, JUDGE